

**EXHIBIT 8**

Preliminary Injunction Order, *Truckee Donner Public Utility District v. USA Media Group, LLC*, CIV S-99-2326 DFL PAN (E.D. Cal. Dec. 15, 1999)

**FILED**

**DEC 15 1999**

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRUCKEE DONNER PUBLIC UTILITY  
DISTRICT, a California local  
public agency,

Plaintiff,

Civ. No. S-99-2326 DFL

v.

O R D E R

USA MEDIA GROUP, LLC, a Nevada  
Limited Liability Company;  
and DOES 1 through 25, inclusive,

Defendant.

The court entered a temporary restraining order on December 1, 1999 for ten days in this matter. On December 10, 1999 at 4:00 p.m., the court heard oral argument on whether a preliminary injunction should be entered. The court also received additional briefing. At the hearing, the court converted the temporary restraining order into a preliminary injunction upon its finding that the likelihood of success on the merits and the balance of hardships weighed in favor of plaintiff. Accordingly, the court orders as follows and now enjoins

1 USA MEDIA GROUP, LLC, its officers, agents, servants,  
2 contractors, employees, and attorneys and all those in  
3 active concert or participation with you or them are  
4 hereby restrained and enjoined from : placing,  
5 attaching, or changing any equipment, including,  
6 without limitation, fiber optic cable, on plaintiff's  
7 poles, or on poles in which plaintiff has an interest,  
8 without first making an application to and receiving  
9 written permission from plaintiff, as required by the  
10 License Agreement.

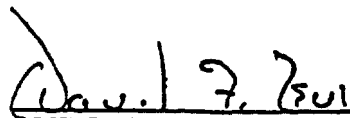
11 This order shall remain in effect until further order of  
12 court.

13 Maintenance done in the ordinary course of business,  
14 unconnected to the placement of fiber optic cable on the poles,  
15 shall not be covered by this Order.

16 The court also finds that the amount in controversy  
17 requirement is satisfied in this case. There is now  
18 uncontroverted evidence that the cost to defendants of the  
19 injunction exceeds \$75,000. It also seems evident that the value  
20 to plaintiff of the pre-approval term in its licensing agreement  
21 is worth at least that amount to plaintiff.

22 IT IS SO ORDERED.

23 Dated: 14 December 1999.

24   
25 DAVID F. LEVI  
United States District Judge  
3

United States District Court  
for the  
Eastern District of California  
December 15, 1999

gm

\* \* CERTIFICATE OF SERVICE \* \*

2:99-cv-02326

Truckee

v.

USA Media

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 15, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Richard D Harmon  
Harmon and Tootell  
3650 Mount Diablo Boulevard  
Suite 220  
Lafayette, CA 94549


HV/DFL

Steven Charles Gross  
Porter Simon  
40200 Truckee Airport Road  
Truckee, CA 96161

Dennis W De Cuir  
DeCuir and Somach  
400 Capitol Mall  
Suite 1900  
Sacramento, CA 95814-4407

Jack L. Wagner, Clerk

BY:

  
Deputy Clerk

**EXHIBIT 9**

Modified Preliminary Injunction Order, *Truckee Donner Public Utility*  
*District v. USA Media Group, LLC*, CIV S-99-2326 DFL PAN (E.D. Cal. Jun 26, 2000)

**FILED**

JUN 27 2000

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_

1 RICHARD D. HARMON, ESQ. - CSB #71116  
 2 MEGAN TOOTELL, ESQ. - CSB #80751  
 3 SHELLEY C. NELSON, ESQ. - CSB #118260  
 4 JOEL M. WESTBROOK, ESQ. - CSB #196578  
 5 HARMON & TOOTELL  
 3650 Mt. Diablo Blvd. Suite 220  
 Lafayette, CA 94549  
 Telephone: (925) 283-9899  
 Facsimile: (925) 283-9898

6 Attorneys for Defendant  
 USA Media Group, LLC

**LODGED**

JUN 28 2000

9 CLERK, U.S. DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA  
 BY \_\_\_\_\_  
 DEPUTY CLERK

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

11 TRUCKEE DONNER PUBLIC UTILITY )  
 12 DISTRICT, a California local public agency, )  
 13 )  
 14 )  
 15 )  
 16 )

Plaintiff,

vs.

14 USA MEDIA GROUP, LLC, a Delaware )  
 15 limited liability company, )  
 16 )

Defendant.

Case No. CIV S-99-2326 DFL PAN

**MODIFIED PRELIMINARY  
 INJUNCTION ORDER**

17 Having regularly appeared before this Court, and from reviewing "Defendant's Motion to  
 18 Modify The Preliminary Injunction Order," as well as the additional briefing provided by both  
 19 parties in this case,

20 IT IS HEREBY ORDERED THAT:

- 21 1. The December 15, 1999 Preliminary Injunction Order is hereby MODIFIED;
- 22 2. The Modified Preliminary Injunction Order now reads, in its entirety, as follows:

23  
 24  
 25  
 26 ///  
 27 ///  
 28 ///

1 USA MEDIA GROUP, LLC, its officers, agents, servants, contractors, employees, and  
2 attorneys and all those in active concert or participation with you or them are hereby restrained and  
3 enjoined from placing, attaching, or changing any equipment, including, without limitation, fiber  
4 optic cable, on plaintiff's poles, or on poles in which plaintiff has an interest, without first making  
5 an application to and receiving written permission from plaintiff, as required by the License  
6 Agreement.

7 USA shall not be in violation of this Modified Preliminary Injunction Order if it elects to  
8 not comply with any condition other than a condition expressly based on a G.O. 95 safety  
9 violation.

10 All disputed conditions placed on approvals of applications shall be reviewed by a Special  
11 Master to make an initial finding as to whether a condition is designed to correct a current G.O. 95  
12 safety concern, or driven by other considerations.

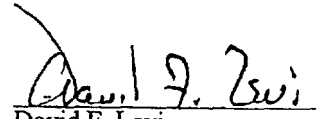
13 When the Utility receives certain technical information from Pacific Bell which the Utility  
14 contends is necessary for its review of certain USA attachment applications, the Utility, within  
15 fourteen (14) days, will act on the affected permit applications, at least to indicate whether or not  
16 there is a G.O. 95 problem.

17 Until the conclusion of this action, USA Media shall indemnify the Utility and hold it  
18 harmless against any claim for damages or injury asserted by a third party against the Utility based  
19 on alleged unsafe conditions created by USA cable facilities traversing railroad or Caltrans rights  
20 of way. Copies of Caltrans and railroad permits shall be provided by USA to the Utility prior to  
21 overlying as the Utility contends is required by paragraph 12 of the License Agreement.

22 Maintenance done in the ordinary course of business, unconnected to the placement of fiber  
23 optic cable on the poles, shall not be covered by this Order.

24 IT IS SO ORDERED.

25 Dated: 6/26/2000

26   
27 David F. Levi  
28 United States District Judge

United States District Court  
for the  
Eastern District of California  
June 27, 2000

gm

## \* \* CERTIFICATE OF SERVICE \* \*

2:99-cv-02326

Truckee

v.

USA Media

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on June 27, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Richard D Harmon  
Harmon and Tootell  
3650 Mount Diablo Boulevard  
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Truckee, CA 96161

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DeCuir and Somach  
400 Capitol Mall  
Suite 1900  
Sacramento, CA 95814-4407

Jack L. Wagner, Clerk

BY: 

Deputy Clerk



**EXHIBIT 10**

Letter from Peter L. Holzmeister, General Manager, Truckee Donner Public Utility District, to  
Roger Terneuzen, Regional Manager, USA Media, undated



## Truckee Donner Public Utility District

(530) 587-3898  
FAX (530) 587-1189

Board of Directors  
Joseph R. Aguera  
J. Ronald Hennig  
Robert A. Jones  
James A. Maats  
Patricia S. Sutton

General Manager  
Peter L. Holzmeister

Mr. Roger Temeuzen  
Regional Manager  
USA Media Group  
10807 West River Street  
Truckee, CA 96161

Dear Mr. Temeuzen:

USA Media is advertising itself as an Internet service provider in contravention of its agreement with Truckee Donner Public Utility District.

Paragraph 1 of the February 15, 1965 License Agreement, under which USA Media has been allowed to attach its cables to the District's power poles, limits USA Media's license to CATV for the distribution of television programs. While I have on more than one occasion explained the District's willingness to negotiate an expansion of the License Agreement to authorize internet service, USA Media has to date not followed through to conduct negotiations. USA Media must refrain from advertising Internet service unless and until the License Agreement is amended to allow it.

I intend to report to the District's board on the status of your company's response to this letter at the regular meeting scheduled for December 1, 1999. I would appreciate the immediate cessation of the advertising that is addressed in this letter. Further, it is my hope that USA Media will respond in writing to indicate, at a minimum, its intent to comply with the License Agreement no later than November 23, 1999, so that I may send your response to my board with its agenda materials.

Once again, we remain willing to meet with you to discuss this letter and to negotiate a mutually acceptable amendment to the License Agreement.

Very truly yours,

Peter L. Holzmeister  
General Manager

Cc: Board of Directors  
General Counsel

**EXHIBIT 11**

Minutes of Special Meeting of Truckee-Donner Public Utility District, July 25, 1999

## **SPECIAL MEETING**

**July 25, 1999**

In accordance with District Code Section 2.02.010, the TDPUD minutes are action only minutes. All Board meetings are recorded on audio tapes which are preserved perpetually and made available for listening to any interested party upon their request.

The special meeting of the Board of Directors of the Truckee Donner Public Utility District was called to order at approximately 3:10 PM in the TDPUD Board Room by Vice President Hemig.

**ROLL CALL:** Directors Joe Aguera, Ron Hemig and James Maass were present. Director Bob Jones was absent and Director Pat Sutton was expected.

**EMPLOYEES PRESENT:** Mary Chapman, Susan Craig, Steve Hollabaugh, Peter Holzmeister, Joe Horvath, Kathy Neus, Bob Quinn and Ed Taylor.

**CONSULTANTS PRESENT:** District Counsel, Steve Gross; Marty Skeer of RMI.

**OTHERS PRESENT:** Eric Brelsach, David Marchant, Roger Temeuzen and Jim Faircloth, representatives of USA Media.

**PUBLIC INPUT:** There was no public input.

### **TELECOMMUNICATIONS BUSINESS PLAN PROCESS – REPORT ON STATUS OF PLAN AND STATUS OF POLE ATTACHMENT LICENSE AGREEMENT BETWEEN THE DISTRICT AND USA MEDIA – CONSIDERATION OF AUTHORIZING CONSTRUCTION OF A BACKBONE OPTICAL FIBER NETWORK – CONSIDERATION OF CREATING THE POSITION OF DIRECTOR OF TELECOMMUNICATIONS SERVICES**

Mr. Holzmeister reported as follows: The District retained the services of Resource Management International to prepare a business case study to determine whether it would be prudent for the District to enter the telecommunications field. The first step was to approach USA Media, the local cable television provider, to offer them leased bandwidth on the District's system for enhancement of their service. We learned that US Media negotiated a new franchise with the town that required them to offer improved services. The improved services would require the use of fiber optic technology.

USA Media informed the District that they, too, were planning to use such a network and they would lease bandwidth to us. We took the position that we needed a more reliable system than is normally associated with a CATV operation, that we are interested in offering telecommunication services and the discussion quickly turned to the possibility of forming a joint venture.

Director Sutton arrived at this point in the meeting. 3:22 PM.

Marty Skeer of Resource Management prepared a document containing principles of a joint venture. At first USA Media officials told us they were enthused about the document, that they saw no problems and that we should work out the details. Then, on July 12 USA Media changed their position. Roger Temeuzen told us that they were not interested in a joint venture if it involved sharing Internet business.

USA Media told us they are interested in a construction partnership whereby we own our portion of fiber and they own their portion of fiber. They would then, without partnering with us, provide CATV and Internet service. Their proposal was that we use our fiber to perform SCADA services and offer Internet without partnering with them.

We countered that we would be willing to provide Internet on our own, as they proposed, but we need to lease two channels on their coax cable to get to the customer premises. USA Media said they would not lease us capacity on their coax, that it was built for their use and they wish to keep it for their use. We told them that we built poles for our use but share them with USA Media and that we expect US Media to now cooperate with us. We discussed the pole attachment license agreement. At that point the meeting ended.

On July 19, 1999, Marty Skeer, John Foreman of RMI and I met with Chris Hillard and Roger Temeuzan of USA Media. They gave us a proposal which provided that the District would pay \$15,000 per mile to USA Media to build the fiber optic network. They would own it and our District would maintain it for a fee. They would share 20% of their Internet profits with us and we would pay the cost of the computer cable modem to enable Internet service. This proposal does not serve the District's strategic needs.

In Mr. Holzmeister's opinion, the District should proceed with deployment of a telecommunications network in two phases. Phase 1 is the fiber optical backbone network and should be undertaken immediately. Phase 2 is the telecommunications distribution infrastructure and should be implemented as subscriber demand is developed.

Mr. Temeuzan indicated that USA Media would like to resume negotiations with the District.

After some discussion, Director Maass moved that this item be put over to the next meeting and that the Board direct staff to continue discussions with USA Media and report back at that time. The motion was seconded by Director Aguera. ROLL CALL: Director Jones, absent; all other Directors, aye. SO MOVED.

The Directors will be provided with a copy of the franchise agreement between USA Media and the town.

#### **DISCUSSION OF THE STATUS OF NEGOTIATIONS WITH WILLIAMS COMMUNICATIONS; POSSIBLE ACTION**

The Board was provided with a document that describes the elements of a joint venture between the District and Williams Communications regarding installation of conduits through the Glenshire Drive and Donner Pass Road corridor. At this time it is not yet in final form but facilitates a discussion of the key points of the joint venture. Mr. Holzmeister reported that the District is at a point where time is becoming critical. This joint venture with Williams carries significant benefit for the District but the project must proceed this summer and fall. The critical step in the process is the CEQA review which needs to proceed immediately to satisfy the project schedule.

The Board asked for a legal opinion as to whether or not the District can claim a categorical exemption on this project. The matter will be placed on the next meeting agenda.

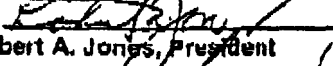
#### **CLOSED SESSION**

It was not necessary for the Board to go into closed session.

**ADJOURNMENT**

There being no further business before the Board, the meeting was adjourned at 5:05 PM.

**TRUCKEE DONNER PUBLIC UTILITY DISTRICT**

By   
Robert A. Jones, President

Prepared by   
Susan M. Craig, Deputy District Clerk

smc

**EXHIBIT 12**

Transcript from Temporary Restraining Order Hearing, *Truckee Donner Public  
Utility District v. USA Media Group, LLC*, CIV S-99-2326 DFL PAN (E.D. Cal. Dec. 1, 1999)

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF CALIFORNIA  
3                   ---oOo---

4                   BEFORE THE HONORABLE DAVID F. LEVI, JUDGE  
5                   ---oOo---

6 TRUCKEE DONNER PUBLIC UTILITY )  
7 DISTRICT, )

8                   Plaintiff, )

9                   vs. )

No. Civ S-99-2326

10 USA MEDIA GROUP, )

11                   Defendant. )  
12 \_\_\_\_\_ )  
13  
14  
15

16                   ---oOo---

17                   REPORTER'S TRANSCRIPT

18                   MOTION FOR TEMPORARY RESTRAINING ORDER

19                   Wednesday, December 1, 1999  
20  
21

22                   ---oOo---

23  
24  
25                   Reported by:       DENNIS F. McKINNON, CSR #2223



1 Q. I'm going to ask you to look specifically at the last  
2 sentence, which reads:

3 "Once again, we remain willing to meet with you to  
4 discuss this letter and to negotiate a mutually acceptable  
5 amendment to the license agreement."

6 Do you see that?

7 A. Yes.

8 Q. What did you mean by that?

9 A. Well, throughout the discussions that we had with USA  
10 Media beginning back in May, we've talked about the license  
11 agreement, and we've always taken the position that the  
12 license agreement needs to be modernized, brought up to date,  
13 to allow to reflect within that agreement that USA Media  
14 should have full authority to offer a range of  
15 telecommunication services, including Internet and so on, that  
16 it should have a longer time limit on it. In fact, we talked  
17 about making the pole attachment agreement, the term, to be  
18 consistent with the franchise that USA Media has with the town  
19 of Truckee, which I think is 15 years. And we always talked  
20 about amending the termination clause in it. Right now  
21 there's an extremely short termination clause. I think it's a  
22 30-day notification.

23 So we've expressed our willingness all along to  
24 renegotiate and modify all of those terms of this license  
25 agreement.

1 Q. The current license agreement does not provide  
2 US Media with the right to conduct Internet service, is that  
3 correct?

4 A. Right. What it does is it says that USA Media is  
5 licensed to use utility poles of the district for cable  
6 television and FM radio services.

7 THE COURT: Can cable television and FM radio be  
8 carried on fiber-optic cable?

9 THE WITNESS: Yes, Your Honor, they can.

10 Q. BY MR. VERGARA: I'm going to hand you what I marked  
11 as Plaintiff's Exhibit 15. This is correspondence dated  
12 November 19, 1999, from you to Mr. Terneuzen, is that correct?

13 A. Yes, that's correct.

14 Q. What was the purpose of this correspondence?

15 A. Well, we had -- as we've discussed before, we became  
16 aware that USA Media was stringing new cable on Truckee Donner  
17 power poles, and we wanted them to apply for a permit to do  
18 that, and we asked them to stop applying the fiber until they  
19 came in and applied for the permit according to the license  
20 agreement.

21 Q. Did USA Media respond to this correspondence?

22 A. No.

23 Q. Are there power poles within Truckee Donner's service  
24 area that Truckee Donner does not own?

25 A. Yes.

1 Q. You never saw any company plans?

2 A. No.

3 Q. Do you know whether or not any existed?

4 A. No.

5 Q. Do you yourself have any sense of how much additional  
6 weight might be added to individual poles on an average in  
7 this interval when the new one is being put up before the old  
8 one is taken down?

9 A. I have no personal knowledge.

10 Q. You indicated that you sent a letter in early  
11 November. It's undated, but it's been made an exhibit. I  
12 believe the exhibit number is 1 -- 14.

13 A. 14?

14 Q. Yeah. I forgot one number. Exhibit 14.

15 What was the purpose of sending that letter?

16 A. The purpose was to ask USA Media to stop advertising  
17 that it offers Internet service until we could renegotiate the  
18 terms of the pole attachment agreement that would then provide  
19 the authority for them to use the poles for Internet service.

20 Q. You did not want that cable company to go off on its  
21 own, correct?

22 MR. VERGARA: Objection. Argumentative.

23 THE COURT: Overruled.

24 MR. HARMON: It's cross-examination.

25 Q. You didn't want them to go off on their own and leave

1 activity.

2 MR. VERGARA: Objection. Relevancy.

3 THE COURT: Sustained.

4 MR. HARMON: Your Honor, if there's First Amendment  
5 activity involved, the basis for the district wanting to  
6 prevent that I think is relevant to the motivation for  
7 ultimately bringing up

8 THE COURT: You asked him whether he considers it to  
9 be First Amendment activity.

10 MR. HARMON: This is personal. Well, objection  
11 sustained.

12 Your Honor, I don't have an extra copy. It was made  
13 an exhibit to Mr. Terneuzen's declaration. I'm hoping counsel  
14 has a copy and it's accessible to the Court.

15 What I'm referring to is a document that says draft,  
16 regular meeting November 17, 1999, and --

17 THE COURT: It's D to the Terneuzen declaration.

18 MR. HARMON: Correct.

19 Q. Have you had an opportunity to see Exhibit D, the  
20 presentation of draft telecommunications business plan by the  
21 district?

22 A. I have seen the plan. Is that your question? Yeah.

23 Q. Correct. Was work on this plan going forward before  
24 early November 1999, to the best of your knowledge?

25 A. Yes.

1. you behind, isn't that correct?

2. A. No. that's not correct.

3. Q. Let's look at it this way. What information had been  
4. given to you before you sent this letter to the effect that  
5. Federal Law 47, Section 5226, definition of cable service,  
6. does not include Internet access; had you been given any  
7. information that that provision did not include cable Internet  
8. access?

9. A. I've never heard that citation before.

10. Q. Is there any reference to safety concerns or needs  
11. for new applications in your early November letter?

12. MR. VERGARA: Objection. The document speaks for  
13. itself.

14. THE COURT: Sustained.

15. Q. BY MR. HARMON: Was that in the back of your mind at  
16. the time you wrote this letter?

17. A. No.

18. Q. When you see the company advertising the advent of  
19. Internet access service, did that suggest to you that they're  
20. going forward with their own independent plans to build fiber  
21. plant?

22. A. No.

23. Q. Do you understand cable television service to be --  
24. let me rephrase.

25. Do you understand advertising to be First Amendment

1 "Internet" was not in the vocabulary in 1960.

2 So it's our feeling, it's our position, sir, that  
3 Internet services are a part of cable television today, just  
4 as the terminology CATV in that 1960s document, the  
5 interpretation of that is what is CATV today, and CATV cable  
6 television today, sir, is more than just video programming,  
7 it's a lot of other services.

8 THE COURT: I'm not going to deal with that quite  
9 now. Do you have a legitimate use for the optic wire for your  
10 cable television?

11 MR. TERNEUZEN: Yes, sir.

12 THE COURT: I think that's all I can deal with here  
13 today. It's possible that some court will tell you that you  
14 can't run the Internet through there at this point, or stop  
15 you from doing it while the matter is litigated. I don't  
16 know. I don't know enough about what that litigation is going  
17 to look like. But I'm trying to keep the two things  
18 distinct.

19 Thank you.

20 MR. TERNEUZEN: Thank you, sir.

21 THE COURT: You can take a seat.

22 Mr. Vergara, what do you propose here? You can see  
23 that I don't want to give the utility district a leg up on  
24 that future litigation. I see that as a separate matter.  
25 You'll have to find out your license agreement, the validity

**EXHIBIT 13**

Letter from Steven C. Gross, Esq., counsel to Truckee Donner Public Utility District, to Richard D. Harmon, Esq., counsel for USA Media, February 4, 2000

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LAW OFFICE OF  
**PORTER • SIMON**  
PROFESSIONAL CORPORATION

---

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40200 Truckee Airport Road  
Truckee, California 96161  
(530) 587-2002 Ext. 115  
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STEPHEN C. LIEBERMAN  
JAMES L. PORTER JR.\*  
JAMES ERNEST SIMON

MICHAEL B. BROWN\*  
M. STEVEN WANG  
\* Also Licensed in Nevada  
† Certified Specialist in Estate Planning,  
Trusts and Probate Law

TWENTIETH CENTURY BUILDING  
335 W. FIRST STREET  
KENO, NV 89503  
(775) 322-6767

February 4, 2000

VIA TELEFAX (925) 283-9898  
VIA FIRST CLASS MAIL  
Richard D. Harmon  
HARMON & TOOTELL  
3650 Mt. Diablo Blvd., Suite 220  
Lafayette, CA 94549

*Re: Truckee Donner Public Utility District vs. USA Media Group, LLC*

Dear Mr. Harmon:

As I stated in my letter of February 2, 2000 to you, I disagree with your account of our February 1, 2000 conference call. Your February 2, 2000 letter is laced with inaccuracies, is incomplete and is an obvious effort to twist what was said to argue your case.

Your letter did not disclose the fact that the telephone call was a conference call in which your associate Mr. Westbrook, Mr. Vergara, you and I participated. The letter further attempts to represent that the District acknowledged all sorts of things that were not in fact acknowledged during the call. It incorrectly states that the District has only safety concerns with respect to certain conditional approvals provided for pole attachments. Moreover, it incompletely describes our conversation with respect to the License Agreement.

During the telephone call you asserted that all of your client's facilities on the utility poles are there with the District's knowledge and consent. You further asserted that your client can not be required to relocate its facilities if they do not violate G.C. 95, and if they were there first. In response to these arguments, Mr. Vergara and I stated that just because your client's facilities are attached on the poles does not mean that the District is aware of or has approved of every such attachment. In response to your "first in time" argument, we pointed you to paragraphs five and six of the License Agreement to alert you to, or remind you, of the District's right to require relocation of your client's attachments for a variety of reasons.

We also discussed the District's letters to your client regarding applications no. 99-2, 99-3, and 99-5, which you had faxed to Mr. Vergara and I shortly before our conference call. I indicated that those letters speak for themselves. They appear to be clearly written and to provide sufficient detail and guidance for your client.



I further specifically stated that the District has both legitimate safety and operational reasons for requiring your client to relocate some of its facilities. Among the reasons is the fact that the higher that your client's facilities are attached to the poles the more dangerous, difficult and time-consuming it could be for District personnel, as well as your client's personnel and the telephone company's personnel, to work on the poles. Your client's higher pole attachments may cause additional, unnecessary stress on the poles. Such higher attachments encroach into space that may be needed by the District for secondary power facilities, or other facilities or by other utilities that may also have an interest in that space.

When your client attaches its facilities in a manner that is inconsistent with the same, commonly utilized standards and practices that are adhered to by the District and many other pole owning utilities, it results in pole construction that creates increased risks and hazards. Personnel who work on those poles may be accustomed to having certain facilities in certain locations and at certain distances. They are able to maneuver themselves and their equipment accordingly. Increased risks could involve entanglement of personnel and or equipment. The added effort and time to work in unusual, atypical situations could cause additional or increased worker stress and fatigue. Increased stress and fatigue could cause errors, mistakes or even accidents. These risks and hazards are compounded when working in darkness and extreme weather conditions.

Given the inherently dangerous nature of our operations, the severe weather and extreme conditions that often face work crews, the District approaches these issues with extreme caution. When a person is in the air, on a slipper or icy pole, in a slippery or icy bucket, in the darkness, driving rain, hail, sleet and/ or snow, howling wind, freezing temperatures and working with an energized line, he/she can not afford to make an error, mistake or have an accident - it could cost him/her his/her life or the life of a co-worker. The District will not wait for that to happen before it requires your client to place its facilities in what the District believes to be the safest location, even if it is not specifically required by G.O. 95. The District has repeatedly and consistently informed your client that while it has adopted G.O. 95 as the minimum and standard requirements for its pole construction, it also has constructs and requires construction in consideration of many other factors.

There may still be other safety and operational reasons of which I am unaware. However, the more detailed explanation provided above of the District's reasons for requiring some of your client's attachments to be relocated obviates the need for any other detailed review of relocation requirements for specific poles.

During our conference call, I indicated that the District had some brief guidelines specific to your client's pole attachments. I was referring to Section 7.48.030 of the District's rules and regulations. Upon closer review of that Section, I see that it pertains to overhead electric lines, and not specifically to cable. Nonetheless, I have enclosed a copy of Section 7.48.030 in order to keep true to my word that it is unnecessary for you to pursue formal discovery channels to obtain that document.

The District sought and obtained the Temporary Restraining Order and Preliminary

Injunction in order to enforce the provisions of the License Agreement. The compromised safety to the District's electric system, facilities, personnel and general public is the irreparable harm that would occur if your client proceeded to make pole attachments in violation of the License Agreement. Judge Levi's order is quite clear. It does not limit the District to reviewing your client's pole attachment applications in light of G.O. 95.

During our conference call, I asked you whether your client could offer any alternate resolution other than its demand that the District abandon its requirements that certain attachments be relocated. You stated that your client did not have any other suggestions for resolving this dispute and that the only acceptable solution would be for the District to cease and desist from requiring such relocations.

However, I suggested that it may be possible for the District to allow your client additional time to relocate the power supplies so as not to delay your client's overloading project. As I stated, I reviewed this idea with the District. The District has no desire or intent to delay your client's project and offers to extend the date by which the power supplies must be relocated to October 15, 2000. Please contact me to discuss this proposal as I believe it should allow your client to move forward more quickly and make it unnecessary to seek further court intervention.

Just as I have completed this letter, I received Mr. Westbrook's letter indicating that you have contacted Mr. Vine requesting a telephone conference. Upon your receipt of this letter you should agree that we are making progress and that the District is working diligently with your client. Please notify the court that your requested conference call is unnecessary. Thank you.

Very truly yours,

PORTER · SIMON  
Professional Corporation



STEVEN. C. GROSS

SCG:ap

Enclosure

cc: Truckee Donner Public Utility District  
Mike Vergara, Esq.

amendments as may hereafter be ordered by the Public Utilities Commission, and an up-to-date, true and correct copy of said order and rules, with future amendments, shall be kept at the District office at all times.

7.48.020.3 The requirements of said General Order No. 128 shall hereafter be referred to in all bids, plans, specifications and contracts for work done by, for, or on behalf of the District, as well as to construction or reconstruction hereafter to be accepted into the District system.

(Electric Rule 24, Res. 8430, Res. 9503, MO95-23)

#### **7.48.030 Overhead Electric Lines -**

7.48.030.1 General Order No. 95 of the Public Utilities Commission of the State of California contains the minimum and standard requirements for all overhead electric line construction and reconstruction hereafter done by or on behalf of the District, as well as for any such construction hereafter to be accepted in the District system.

7.48.030.2 The adoption of General Order No. 95 shall apply in the future to any and all amendments as may hereafter be ordered by the Public Utilities Commission, and an up-to-date, true and correct copy of said order and rules, with future amendments, shall be kept at the District office at all times.

7.48.030.3 The requirements of said General Order No. 95 shall hereafter be referred to in all bids, plans, specifications and contracts for work done by, for, or on behalf of the District, as well as to construction or reconstruction hereafter to be accepted in the District system.

(Electric Rule 22, Res. 8430)

### **CHAPTER 7.52**

#### **STREET AND SECURITY LIGHT SERVICE**

##### **Sections:**

7.52.005	Definitions
7.52.010	Rates
7.52.020	New Applicants

##### **7.52.005 Definitions**

7.52.005.1 Street lights - Street lights are those lighting systems installed along public and governmental corridors.

7.52.005.2 Security lights - Security lights are those lighting systems installed on private and commercial property.

##### **7.52.010 Rates**

**EXHIBIT 14**

Letter from Peter L. Holzmeister, General Manager, Truckee Donner Public  
Utility District, to Jim K. Faircloth, Executive Vice President & Chief  
Operating Officer, USA Media, Aug. 3, 2000



## Truckee Donner Public Utility District

Business Office

(530) 587-3696

FAX (530) 587-5056

Board of Directors

Joseph R. Aquera  
J. Ronald Hemig  
Robert A. Jones  
James A. Maass  
Patricia S. Sutton

August 3, 2000

General Manager  
Peter L. Holzmeister

Mr. Jim K. Faircloth  
Executive Vice President  
& Chief Operating Officer  
USA Media Group, LLC  
6490 South McCarran Boulevard  
Suite 22  
Reno, Nevada 89509

Subject: Pole Contact License Agreement

Dear Mr. Faircloth;

Some time ago the Truckee Donner PUD and USA Media Group spent several months trying to agree on a plan for the sharing of a fiber optic backbone system that would be owned and operated by the District. We were unable to reach an agreement, and it is clear that both companies will pursue their business interests independently.

In order to do that we believe that TDPUD and USA Media should execute a new pole attachment agreement. This agreement will provide USA Media with continued access to poles and will permit USA Media to use the poles for services beyond that of Cable Television, including Internet service. As you will recall, the current License Agreement provides that USA Media Group, LLC may only use poles the District owns, or has interest in, for traditional Cable Television services. Further, we also believe that the annual pole rental should be increased to reflect a rate found reasonable elsewhere in California. Our current rate was set at \$4.00 per pole on February 24, 1976. I believe that you would agree that costs associated to poles have increased over the past twenty-six years. In fact we understand that you have recently entered into revised and/or new Pole Attachment Agreements with agencies such as ours that reflect such changes.

With all of this in mind we have enclosed a new Pole Contact License Agreement. We would like this Agreement to take effect October 15, 2000. At that time this new Agreement would supercede our existing Agreement, dated February 15, 1965, which pursuant to Section 219, would be terminated as of that date.

I believe it would be beneficial for us to meet and discuss this new Pole Contact License Agreement. As such, please give me a call so that we can schedule a time to meet.

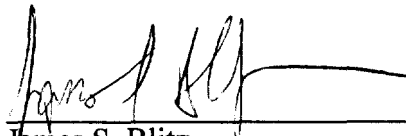
Very truly yours,

  
Peter L. Holzmeister  
General Manager

**CERTIFICATE OF SERVICE**

I, James S. Blitz , an attorney in the law firm of Davis Wright Tremaine LLP, do hereby certify that a copy of the foregoing "Petition for Preemption and Declaratory Ruling" has been sent by first-class mail, postage prepaid, this 3<sup>rd</sup> day of November, 2000, to the following:

Peter L. Holzmeister, General Manager  
Truckee Donner Public Utility District  
P.O. Box 309  
11570 Donner Pass Road  
Truckee, CA 96160

  
\_\_\_\_\_  
James S. Blitz